



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

This hearing was convened as a result of an Application for Dispute Resolution, made on July 23, 2018 (the “Application”). The Applicant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- an order that the Respondent return all or part of the security deposit and pet damage deposit; and
- an order granting recovery of the filing fee.

The Applicant attended the hearing and was accompanied by N.B. and D.B., witnesses. The Respondents attended the hearing on their own behalves. All in attendance provided affirmed testimony.

The Applicant testified the Application package was served on the Respondents in person. The Respondents acknowledged receipt. In addition, the Respondents testified the documentary evidence upon which they intended to rely was served on the Applicant in person. The Applicant acknowledged receipt. During the hearing, neither party expressed any concern with respect to service or receipt of the Application package or documentary evidence. Accordingly, pursuant to section 71 of the *Act*, I find these documents are sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the beginning of the hearing, the Respondents asserted that the director does not have jurisdiction to consider the Application. They testified they run a homestay for students. They provide furnished rooms to students on the upper floor of their residence. While the students have access to a kitchen and bathroom area, the rest of the Respondents' home is shared. The Respondents testified they routinely access the student area, particularly as the Respondents provide cleaning services. In addition, the Respondents referred me to their homestay profile, which states: "We provide fixings for breakfast and lunch and serve dinner each day." The Respondents also testified that students would occasionally use the downstairs kitchen for cooking, and that the Respondents would occasionally use the upstairs kitchen for baking. It was also noted that the homestay profile advises that the Respondents have a small pet.

The Applicant disagreed with the Respondents' submissions. He suggested that the space was divided into upper and lower units, and that there was no sharing of kitchen or bathroom facilities. He acknowledged the Respondents provided meals but that he did not avail himself of this service. Although the Applicant initially testified that bathrooms were shared, he subsequently stated they were not.

Neither party submitted a tenancy agreement into evidence. I also note that the dispute address provided by the Applicant is the same as the Respondents' address, and does not refer to a separate unit.

Section 4(c) of the *Act* confirms that the *Act* does not apply to living accommodation in which the Applicant shares bathroom or kitchen facilities with the owner of that accommodation. In this case, I find it is more likely than not that the parties shared kitchen facilities. Indeed, the homestay advertisement indicated that "fixings" for breakfast and lunch were provided and that dinners were served to students, which was acknowledged by the Applicant.

Accordingly, pursuant to section 4(c) of the *Act*, I find the *Act* does not apply to the agreement between the parties. The Application is dismissed for lack of jurisdiction.

Conclusion

The Application is dismissed for lack of jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 27, 2018

Residential Tenancy Branch